IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9161 of 2006
WITH
SPECIAL CIVIL APPLICATION No. 9162 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NUTUN JAYHIND CO-OPERATIVE HOUSING LTD - Petitioner
Versus
PUSHPABEN RATILAL PATEL D/O MANCHANDAS & 3 - Respondents

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Appearance :
MR SHITAL R PATEL for Petitioner(s) : 1,
MR PM VYAS for Respondent No. 1.
MS SEJAL H VYAS for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/10/2007
COMMON ORAL JUDGMENT

1. The petitioner i.e. - Nutan Jayhind Co. Operative Housing Society Limited has filed these two petitions under Article 227 of the Constitution of India challenging the orders passed by the learned City Civil Judge, Ahmedabad below an application Exh. 20 in Civil Suit No. 5097 of 1996 and below an application Exh. 22 in Civil Suit No. 5098 of 1996.

2. The main grievance of the petitioner in both these petitions is that though the petitioner was a party in both the suits as party – defendant No. 4, the service of summons was not effected on the petitioner. This fact came to the notice of the petitioner only in the year 2004 when the respondent Nos. 2 to 4 have filed Civil Suit No.2665 of 2004 before the City Civil Court, Ahmedabad. On receipt of the summons in the said suit, the petitioner has made applications below Exh. 20 & 22 in Civil Suit Nos. 5097 & 5098 of 1996 respectively. The petitioner has raised a specific dispute before the City Civil Court that the service of the summons was not effected and there was a fraud and collusion between the respondents in filing the said suit against the petitioner. The learned City Civil Judge, Ahmedabad while disposing of both these applications has observed that the chamber summons have been preferred after a long time of 9 years which clearly reflects the fact that the same have

been preferred to put back the clock and to protract the litigation which has been filed in the year 1996 and now awaiting the final adjudication. The learned City Civil Judge has further observed that if the chamber summons is allowed, it would cause further delay which would run contrary to the basic principles of expeditious hearing of the entire suit. Based on this finding, the chamber summons moved by the petitioner have been rejected.

3. It is these orders of the learned City Civil Judge which are under challenge in the present two petitions.

4. Both the petitions have been admitted and rule was issued on 26.07.2006. The Court has also granted interim relief staying further proceedings of Civil Suit Nos. 5097 & 5098 of 1996.

5. Heard Mr. A.J. Patel, learned advocate with Mr. Shital R. Patel appearing for the petitioner and Mr. B.M. Vyas, learned advocate appearing for respondent No. 1.

6. Having perused the record and pleadings of the parties, the Court is of the view that the service of the summons in both the suits was not effected on the petitioner and hence, the petitioner was justified in raising the dispute before the Civil Court that the petitioner was not aware about filing of the suits. The Court has also taken into consideration the fact that before filing the suits in question before the City Civil Court by the respondent No.1, earlier also, in 1995, two Civil Suits were filed wherein the petitioner has appeared and filed its reply.

Thereafter, with the leave of the Court to file fresh suits, the said suits were withdrawn by the respondent No.1. If the appearance were filed by the petitioner in the earlier two suits filed by the respondent No.1, there is no scope for any presumption that despite service of the summons, the petitioner has chosen not to appear in the subsequent suits for all these years. The Court is, therefore, of the view that the summons of the suit was not served on the petitioner on 19.10.1996. No evidence has come on record showing that the petitioner was aware about filing of the suits. The learned City Civil Judge is, therefore, not justified in rejecting the applications Exh. 20 & 22 moved by the petitioner only on the ground that the said applications were filed after a period of expiry of 09 years. The impugned orders are, therefore, not sustainable and are liable to be quashed and set aside.

7. It is made clear that the Court has not gone into the merits of the matter nor expressed any opinion on the issues raised in these petitions. It is open for the parties to make their respective pleadings before the Court. The petitioner is hereby permitted to file written statement in the pending suits before the City Civil Court within one month from today and the learned City Civil Judge is hereby directed to expedite the hearing for disposal of the suits and is further directed to decide and dispose of both the suits i.e. Civil Suit Nos. 5097 & 5098 of 1996 as expeditiously as possible, preferably within a period of six months from the date of receipt of the writ or from the date of receipt of the certified copy of this order,

whichever is earlier.

8. It is open for the parties to move an application for consolidation of suits between the parties before the learned City Civil Judge. If such an application is moved by any party, the same shall be decided in accordance with law.

9. Subject to the aforesaid direction and observation, both these petitions are accordingly disposed of without any order as to cost. Rule is made absolute to the aforesaid extent.

10. Direct service is permitted.

[K. A. PUJ, J.]

Savariya